

77-19-205. Procedures on finding of incompetency to be executed -- Subsequent hearings -- Notice to attorneys.

(1) (a) (i) If after the hearing under Section 77-19-204 the inmate is found to be incompetent to be executed, the court shall continue the stay of execution and the inmate shall receive appropriate mental health treatment.

(ii) Appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the inmate's competency to be executed.

(b) The court shall order the executive director of the Department of Human Services to provide periodic assessments to the court regarding the inmate's competency to be executed.

(c) The inmate shall be held in secure confinement, either at the prison or the State Hospital, as agreed upon by the executive director of the Department of Corrections and the executive director of the Department of Human Services. If the inmate remains at the prison, the Department of Human Services shall consult with the Department of Corrections regarding the inmate's mental health treatment.

(2) (a) The examiner or examiners designated by the executive director of the Department of Human Services to assess the inmate's progress toward competency may not be involved in the routine treatment of the inmate.

(b) The examiner or examiners shall each provide a full report to the court and counsel for the state and the inmate within 90 days of receipt of the court's order. If any examiner is unable to complete the assessment within 90 days, that examiner shall provide to the court and counsel for the state and the inmate a summary progress report which informs the court that additional time is necessary to complete the assessment, in which case the examiner has up to an additional 90 days to provide the full report, unless the court enlarges the time for good cause. The full report shall assess:

(i) the facility's or program's capacity to provide appropriate treatment for the inmate;

(ii) the nature of treatments provided to the inmate;

(iii) what progress toward restoration of competency has been made;

(iv) the inmate's current level of mental disorder and need for treatment, if any;

and

(v) the likelihood of restoration of competency and the amount of time estimated to achieve it.

(3) The court on its own motion or upon motion by either party may order the Department of Human Services to appoint additional mental health examiners to examine the inmate and advise the court on the inmate's current mental status and progress toward competency restoration.

(4) (a) Upon receipt of the full report, the court shall hold a hearing to determine the inmate's current status. At the hearing, the burden of proving that the inmate is competent is on the proponent of competency.

(b) Following the hearing, the court shall determine by a preponderance of evidence whether the inmate is competent to be executed.

(5) (a) If the court determines that the inmate is competent to be executed, it shall enter findings and shall proceed under Subsection 77-19-202(2)(c).

(b) (i) If the court determines the inmate is still incompetent to be executed, the

inmate shall continue to receive appropriate mental health treatment, and the court shall hold hearings no less frequently than at 18-month intervals for the purpose of determining the defendant's competency to be executed.

(ii) Continued appropriate mental health treatment under Subsection (1)(a)(i) does not include the forcible administration of psychoactive medication for the sole purpose of restoring the inmate's competency to be executed.

(6) (a) If at any time the clinical director of the Utah State Hospital or the primary treating mental health professional determines that the inmate has been restored to competency, he shall notify the court.

(b) The court shall conduct a hearing regarding the inmate's competency to be executed within 30 working days of the receipt of the notification under Subsection (6)(a), unless the court extends the time for good cause. The court may order a hearing or rehearing at any time on its own motion.

(7) Notice of a hearing on competency to be executed shall be given to counsel for the state and for the inmate, as well as to the office of the prosecutor who prosecuted the inmate on the original capital charge.

Enacted by Chapter 137, 2004 General Session